

10/3/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kenneth H. Allman II

Serial No. 75/762,516

Andrew B. Mayfield for Kenneth H. Allman II.

Jessie W. Billings, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Hanak, Chapman and Bottorff, Administrative
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Kenneth H. Allman II (applicant) seeks to register
HOSPITALLINK for "computer services, namely, providing a
searchable index of hospitals and other medical care
facilities available on a global computer network." The
application was filed on July 28, 1999 with a claimed
first use date of January 26, 1998.

The Examining Attorney has refused registration on
the basis that applicant's mark, as applied to
applicant's services, is merely descriptive pursuant to
Section 2(e)(1) of the Trademark Act.

When the refusal to register was made final,

applicant

Ser. No. 75/762,516

appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). Whether a mark is merely descriptive is determined in relation to the goods or services for which registration is sought, not in the abstract. In re Omaha National Corp., 819 D.2d 1117, 2 USPQ 1859, 1861 (Fed. Cir. 1987); In re Abcor Development Corp., 588 F. 2d 811, 200 USPQ 215, 218 (CCPA 1978).

The Examining Attorney and applicant disagree as to what applicant's actual services are. The Examining Attorney contends that "the applicant's web site provides links to hospitals. The site provides the names of hospitals that the user can then click on and be linked

to the hospital." (Examining Attorney's brief page 2).
On the other hand, applicant contends that its services
consist

Ser. No. 75/762,516

simply of "an Internet site that provides information on
hospitals." (Applicant's brief page 2).

In reviewing applicant's specimen of use, it is not
clear as to exactly what applicant's actual services are.
Applicant's specimen contains the following statement:

"HOSPITALLINK™ makes it easy for you to locate the web
site of almost any hospital you choose in a matter of
seconds with one click and a scroll of a computer mouse."

However, applicant's specimen of use does not indicate
that having located the web site of the desired hospital,
the user of applicant's services could then employ said
services to directly link to that web site. If the user
of applicant's actual services could use applicant's web
site to directly link up with the web site of the desired
hospital, then we would find that applicant's mark is
indeed merely descriptive of applicant's actual services.
On the other hand, if applicant's web site merely

provides information on hospitals, and the user of applicant's services then had to log off of applicant's web site and log on to the web site of the desired hospital, we would find that applicant's mark was not merely descriptive of applicant's actual services.

However, the foregoing dispute between the Examining

3

Ser. No. 75/762,516

Attorney and applicant regarding applicant's actual services is essentially irrelevant. As previously noted, the mere descriptiveness of a mark is determined in relation to the goods or services as described in the application. Our primary reviewing Court has emphasized that "the authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods [or services] set forth in the application regardless of what the record may reveal as to the [actual] nature of an applicant's goods [or services]." Octocom Systems, Inc. v. Houston Computer Services, Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

As previously noted, the services for which applicant seeks to register HOSPITALLINK are "computer

services, namely, creating and providing a searchable index of hospitals and other medical care facilities available on a global computer network." In other words, applicant is merely seeking to register HOSPITALLINK for a computer index of hospitals and other medical care facilities. Applicant is not seeking to register HOSPITALLINK for services which would allow the user to directly link with a particular hospital's web site. While we have little doubt that a user

Ser. No. 75/762,516

of applicant's applied for services, upon finding the web site of the desired hospital in applicant's searchable index, would then most likely link up with that web site on his own, the fact remains that applicant's mark HOSPITALLINK does not directly convey immediate information regarding applicant's applied for services. Applicant's applied for services simply do not feature any links or connections between the users of applicant's services and hospitals or other medical care facilities. Of course, it need hardly be said that to the extent that there are any doubts on the issue of mere descriptiveness, it is the practice of this Board to

resolve such doubts in applicant's favor. In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972).

Decision: The refusal to register is reversed.